

Memorandum

515.1181.300

To: Ms. L. P. Salcedo
Business Tax Representative

Date: July 15, 1996

From: Sophia H. Chung
Tax Counsel

Subject: M--- A--- M---, Et al
C--- H--- A---
Account No. SR -- XX-XXXXXX

This is in response to your memorandum dated April 25, 1996, asking how tax applies to charges for monitoring services provided by C--- H--- A--- (“C---”). By way of a letter dated April 12, 1996, addressed to you, Ms. S--- N--- of C--- has provided the following factual background:

“C--- H--- A--- is the local service administrators of P--- M--- S--- which provides complete and expansion programs of Personal Emergency Response Systems (PERS) across the United States. Our service consists of an easy to use electronic device designed to signal a friend, relative, emergency service whenever help is needed.

“We buy or lease these units from P--- M--- S--- and market the service in [California]. We find clients, install our units at client’s homes and charge a one time installation fee and a monthly fee for the rental of the equipment (which is taxable) and a monthly fee for the monitoring service. . . . The monitoring is done through P--- M--- S---’ Monitoring Center in [out of state]. We bill our clients for rental and monitoring of the equipment and they pay us directly and C--- H--- A--- in turn pays P--- M--- S--- for the purchase or lease of the equipment and the monitoring of all units in service.”

DISCUSSION

Retail sales of tangible personal property in California are subject to sales tax, measured by the gross receipts, unless the sale is specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) The term “sale” means any transfer of title or possession of tangible personal property for consideration. (Rev. & Tax. Code § 6006(a).) A sale at retail means a sale for any purpose other than resale in the regular course of business. (Rev. & Tax. Code § 6007.) Although the retailer owes the sales tax, the retailer may collect sales tax reimbursement from

the purchaser if the contract of sale so provides. (Civ. Code § 1656.1.) When sales tax does not apply, use tax, measured by the sales price, applies to the use of tangible personal property purchased from a retailer for the storage, use, or other consumption in California, unless the use is exempt from taxation by statute. (Rev. & Tax. Code §§ 6201, 6401.) Neither the sales tax nor the use tax applies to charges for services not constituting sales of tangible personal property. (Reg. 1501.)

C--- acknowledges that the monthly fee charged to its customers for equipment rental is subject to tax. The only question presented is whether the monthly fee for monitoring the equipment is subject to tax. In a letter dated March 13, 1996, to Mr. B. H. Watson, Supervisor of Return Analysis Section, Ms. N--- explains the operation of the monitoring equipment and services. When the customer presses the button on the portable transmitter installed in the customer's home, it sends a radio signal to the receiver, which then dials the central monitoring service located in [out of state]. The center then notifies one of three emergency contacts designated by the customer at the time of the installation of the unit. There is no charge for the number of times the system is used by the customer. Based on the unique situation presented by the specific facts provided by C---, we regard the monthly fee for monitoring the unit as a nontaxable charge for services. Thus, we conclude that the contract between C--- and its customers is for both the sale of tangible personal property and the provision of services. In other words, the monthly fee for the rental of the monitoring equipment is subject to tax, however, the monthly fee for monitoring the equipment is not subject to tax.

SHC:rz